

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IV

In The Matter Of:

CARRIER AIR CONDITIONING
SUPERFUND SITE

Carrier Corporation,
Collierville, Tennessee

Respondent.

)
)
) Proceeding Under Section
) 106(a) of the Comprehensive
) Environmental Response,
) Compensation, and
) Liability Act of 1980, as
) amended by the Superfund
) Amendments and
) Reauthorization Act of 1986
) 42 U.S.C. § 9606(a)
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)
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) U.S. EPA Docket No. 93-06-C
)

UNILATERAL ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION



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I. INTRODUCTION AND JURISDICTION

A. This Unilateral Administrative Order For Remedial Design and Remedial Action ("this Order") directs Respondent, as identified in Section III herein, to develop the Remedial Design (RD) for the remedy described in the Record of Decision (ROD), dated September 3, 1992, for the Carrier Air Conditioning Superfund Site, and to implement Remedial Action (RA), Operation and Maintenance, and Performance Monitoring. This Order is issued to Respondent by the United States Environmental Protection Agency (EPA) under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order

12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-B and redelegated to the Director, Waste Management Division on January 5, 1989, by Regional Delegation No. 8-14-A.

II. PARTY BOUND

A. This Order applies to and shall be binding upon Respondent, as identified in Section III, its directors, officers, employees, agents, successors, and assigns. Respondent is responsible for carrying out all activities required by this Order. No change in the ownership, corporate or other control of Respondent shall alter the Respondent's responsibilities under this Order.

B. Respondent shall provide a copy of this Order to any prospective owners or successors before property rights, stock, or assets are transferred. Respondent shall provide a copy of this Order to all contractors, sub-contractors, laboratories, and consultants retained to perform any Work under this Order, within five (5) days after the effective date of this Order, or on the date such services are retained, whichever date occurs later.

Notwithstanding the terms of any contract, Respondent is responsible for ensuring that its contractors and subcontractors and agents perform the work contemplated herein in accordance with this Order.

C. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor and agent shall be deemed to be related by contract to the Respondent within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

D. Within thirty (30) days after the effective date of this Order, Respondent shall record a copy or copies of this Order in the appropriate office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of this Order is indexed to the titles of each and every property at the Site so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties.

Respondent shall, within fifteen (15) days after the effective date of such recording, send notice of such recording and indexing to EPA.

E. Not later than sixty (60) days prior to any transfer of any real property interest in any property included within the Site, Respondent shall submit a true and correct copy of the transfer documents to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

III. DEFINITIONS

Unless noted to the contrary, the terms of this Administrative Order shall have the meaning assigned to those terms pursuant to CERCLA or any regulation promulgated under CERCLA. Whenever the terms listed below are used in this Administrative Order and Exhibits and Appendices attached hereto, the following definitions shall apply:

A. "Carrier" shall mean Carrier Corporation, a Delaware corporation with its principal place of business in New York.

B. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 41 U.S.C. § 9601 et seq.

C. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next working day.

D. "EPA" shall mean the United States Environmental Protection Agency.

E. "Facility" shall mean any facility meeting the definition provided in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

F. "Hazardous Substance" shall mean any substance meeting the definition provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

G. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

H. "Operation and Maintenance" or "O&M" shall mean all operation and maintenance activities required by the ROD, the Statement of Work and the Final Operation and Maintenance Plan developed by Respondent and approved by EPA pursuant to this Order, including any additional activities required by Sections IX, X, and XI.

I. "Paragraph" shall mean a portion of this Order identified by a capital letter.

J. "Parties" shall mean EPA and Respondent.

K. "Performance Monitoring" shall mean all performance monitoring activities required by the ROD, the Statement of Work,

and the Performance Standards Verification Plan developed by Respondent and approved by EPA, including any additional activities required by Sections IX, X, and XI, to ensure the effectiveness of the implemented remedy confirming over time that all Performance Standards are met.

L. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the ROD, the Statement of Work, the Remedial Action Work Plan and the Remedial Design Work Plan developed by Respondent and approved by EPA pursuant to this Order, including any additional activities required by Sections IX, X, and XI.

M. "Pollutant or Contaminant" shall mean any substance defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

N. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Carrier Air Conditioning Superfund Site which was signed on September 3, 1992, by the Regional Administrator, EPA Region IV, including all attachments thereto. The ROD is attached as Appendix 1 and incorporated herein by reference.

O. "Remedial Action" or "RA" shall mean all property acquisition, excavation, transportation, construction, treatment, field engineering or other similar activities required by the ROD, Tasks III, IV and V of the Statement of Work, and the Remedial Action Work Plan developed by Respondent and approved by EPA pursuant to this Order and any additional activities required by Sections IX, X, and XI.

P. "Remedial Design" or "RD" shall mean all studies, investigations or surveys conducted and plans and specifications prepared that are necessary to implement the Remedial Action, Operation and Maintenance, and Performance Monitoring activities required by the ROD, Tasks I and II of the Statement of Work, and the Remedial Design Work Plan developed by Respondent and approved by EPA pursuant to this Order, including any additional activities required by Sections IX, X, and XI.

Q. "Respondent" shall mean the Carrier Corporation.

R. "Response Costs" shall mean any costs, including indirect costs, incurred by the United States pursuant to 42 U.S.C. § 9601 et seq.

S. "Statement of Work or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, Operation and Maintenance, and Performance Monitoring work at the Site. The SOW is attached hereto as Appendix 2 and is incorporated herein by reference.

T. "Section" shall mean a portion of this Order identified by a Roman numeral.

U. "Site" shall mean the Carrier Air Conditioning Superfund Site, encompassing approximately 135 acres, located on Byhalia Road in Collierville, Shelby County, Tennessee, together with all areas to which hazardous substances released at this parcel have migrated and all areas in close proximity to the contamination that are necessary for implementation of the Work, as generally depicted on the map attached hereto as Appendix 3.

V. "State" shall mean the State of Tennessee Department of

Environment and Conservation and any successor departments or agencies of the State of Tennessee.

W. "United States" shall mean the United States of America, including the Department of Justice and EPA.

X. "Work" shall mean all activities Respondent is required to perform under this Order, including Remedial Design, Remedial Action, Operation and Maintenance, and Performance Monitoring in accordance with Section VIII hereof, and any schedules or plans required to be submitted pursuant thereto, including any additional work required under Sections IX, X, XI, XII, XIV, and XVI.

IV. FINDINGS OF FACT

A. The Site is located in Collierville, Shelby County, Tennessee, on Byhalia Road, near the intersection of Poplar Avenue and Byhalia Road. The Site is located on the western side of the Town of Collierville, and Collierville is approximately 21 miles east of downtown Memphis, Tennessee.

B. Carrier operates a heating and air conditioning unit manufacturing facility on the approximately 135-acre parcel of land, which comprises a majority of the Site. Carrier is the principal owner of the parcel.

C. In 1979 and 1985, two discrete releases of trichloroethylene (TCE) occurred at the facility. TCE was used as a solvent in the manufacturing process. In addition, a wastewater lagoon, operated from about 1972 to 1979, apparently contained waste contaminated with TCE and zinc. In 1986, low levels of TCE were detected in one of the extraction wells at the Town of

Collierville's Water Plant 2.

D. On February 21, 1990, (55 Fed. Reg. 6154), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

E. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, Carrier conducted a Remedial Investigation/Feasibility Study (RI/FS) for the Site pursuant to 40 C.F.R. § 300.430. Carrier commenced the RI/FS in accordance with a Administrative Order by Consent executed on September 28, 1989.

F. The RI/FS was completed by Carrier in April 1992, and confirmed the presence of hazardous substances in the soil at the Site and in the groundwater beneath and beyond such disposal areas. A risk assessment was performed as a part of the RI/FS to determine the pathways of exposure to hazardous substances at or from the Site and the risks of harm to human health as a result of such exposure. The following hazardous substances found in the soil and in the groundwater beneath the Site were selected as contaminants of concern for purposes of conducting the risk assessment: TCE, dichloroethylene (DCE), tetrachloroethylene (PCE), 1,2-dichloroethane (DCA), vinyl chloride, lead and zinc.

G. The baseline risk assessment contained in the RI/FS concludes that the primary health risk posed by the Site is through ingestion and inhalation of TCE and lead in untreated groundwater beneath the Site.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA

published notice of the completion of the FS and of the proposed plan for remedial action on April 21, 1992, in a major newspaper of general circulation in Shelby County, Tennessee, and provided opportunity for public comment on the proposed remedial action.

I. The decision by EPA on the remedial action to be implemented at the Site is embodied in a Record of Decision ("ROD"), executed on September 3, 1992, on which the State has given its concurrence. The Record of Decision is attached to this Order as Appendix 1 and is incorporated herein by reference. The ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action. The administrative record is located and is available to the public at EPA's offices in Atlanta, Georgia and at the Shelby County Public Library located in Collierville, Tennessee.

J. The remedy set forth in the ROD includes:

a. remediation of contaminated soils and shallow ground water in the old lagoon area and main plant source areas through the use of soil vapor extraction;

b. extraction of contaminated ground water from Memphis Sands aquifer by Town of Collierville Water Plant 2 currently-operating wells and subsequent treatment of the water through air stripping;

c. discharge of treated ground water into (1) a municipal water supply, (2) a local publicly-owned treatment works, (3) surface water, or (4) the Memphis Sands aquifer;

d. periodic monitoring to assess the effectiveness of the

remedy for a period of up to thirty (30) years; and

e. placement of institutional controls on well construction and water use in the general area.

K. Based on the current and future uses of ground water, the remedy is designed to prevent the migration of contaminants from the shallow water bearing zone to the Memphis Sands aquifer in order to maintain (and, eventually, enhance) the quality of the Memphis Sands aquifer.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

A. The Carrier Air Conditioning Superfund Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. Respondent is a "liable party" as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

D. The contaminants found at the Site are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

E. These hazardous substances have been released into the soils and groundwater at and from the Site.

F. The past disposal and present migration of hazardous substances at and from the Site are a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

G. The potential for future migration of hazardous substances at and from the Site poses a threat of a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

H. The release and threat of release of one or more hazardous substances at and from the Site may present an imminent and

substantial endangerment to the public health or welfare or the environment.

I. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

VI. NOTICE TO THE STATE

On January 20, 1993, prior to issuing this Order, EPA notified the State that EPA would be issuing this Order.

VII. ORDER

Based on the foregoing, Respondent is hereby ordered to comply with this Order, including but not limited to all Appendices to this Order, all documents incorporated by reference into or to be developed pursuant to this Order, and all schedules and deadlines in this Order, attached to this Order, incorporated by reference into this Order, or to be developed pursuant to this Order.

VIII. WORK TO BE PERFORMED

A. Appendix 2 to this Order is the SOW which sets forth the major tasks that must be completed by Respondent to implement the Work for the Site. The SOW is incorporated into this Order by reference as if fully set forth herein and is thereby both a requirement and an enforceable part of this Order.

B. Respondent shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondent shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

C. All aspects of the Work to be performed by Respondent

pursuant to this Order shall be under the direction and supervision of a qualified contractor ("supervising contractor") who shall be a qualified professional engineer or geologist with expertise in hazardous waste cleanups, the selection of which shall be subject to approval by EPA. Within seven (7) days after the effective date of this Order, Respondent shall submit to EPA in writing the name, title, and qualifications of the supervising contractor, including primary support entities and staff, proposed to be used in carrying out any Work performed under this Order.

D. If EPA disapproves of the selection of the supervising contractor, Respondent shall submit to EPA within fifteen (15) calendar days after receipt of EPA's disapproval of the supervising contractor previously selected, a list of contractors, including primary support entities and staff, that would be acceptable to Respondent. EPA shall, after receipt of the list, provide written notice of the names of the contractors it approves, if any. Respondent may select any approved contractor from that list and shall notify EPA of the name of the supervising contractor selected within ten (10) days of EPA's designation of approved contractors.

E. If at any time thereafter, Respondent proposes to use a different supervising contractor for Work at the Site, Respondent shall notify EPA and shall obtain approval from EPA before a new supervising contractor performs any Work under this Order. Any change in the supervising contractor made pursuant to this paragraph, shall not excuse any Work, deadlines, or schedules

required under this Order.

F. The purpose of the Remedial Design/Remedial Action is to design, construct, operate and maintain, and monitor the performance of the selected remedy to ensure protection of human health and the environment. The Remedial Design (discussed in Paragraph G, below) includes those activities to be undertaken by Respondent to develop the final plans and specifications, general provisions, and special requirements necessary to translate the ROD into the remedy to be constructed under the Remedial Action phase (discussed in more detail in Paragraph H, below). The Remedial Action involves the implementation phase of Site cleanup or actual construction of the remedy. The RA is based on the RD to achieve at the Site the Performance Standards specified in the ROD. The major tasks that Respondent must complete and the deliverables associated with each task to support the RD/RA are described in the SOW. EPA approval of a task or deliverable shall not be construed as a guarantee as to the ultimate adequacy of such a task or deliverable.

G. Remedial Design - Within sixty (60) days after the effective date of this Order, Respondent shall submit a work plan for the Remedial Design at the Site ("Remedial Design Work Plan" or "RD Work Plan") to EPA for review, modification and/or approval. The RD Work Plan shall be developed in accordance with the SOW and be consistent with the ROD, EPA Superfund Remedial Design and Remedial Action Guidance, and any additional guidance documents identified by EPA. Upon approval by EPA, the RD Work Plan is incorporated into and becomes enforceable under this Order as if

fully set forth herein. Any violation of the approved RD Work Plan shall be a violation of this Order. Upon approval of the RD Work Plan by EPA, Respondent shall implement the Work Plan in accordance with the schedule therein. Unless otherwise directed by EPA, Respondent shall not commence field activities or Work required by the RD Work Plan at the Site until written approval of the RD Work Plan by EPA is received.

H. Remedial Action - As required by the SOW, Respondent shall submit for review, modification, and/or approval by EPA, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan" or "RA Work Plan"). The RA Work Plan shall be developed in accordance with the SOW and be consistent with the ROD, EPA Superfund Remedial Action Guidance and any additional guidance documents identified by EPA. The Remedial Action Work Plan shall include, but not be limited to, the following: (1) a schedule for completion of each required activity including developing and submitting other required Remedial Action plans, i.e. the Prefinal Inspection Report and Remedial Action Report (as such terms are defined in the SOW); (2) a Construction Management Plan; (3) a method for selection of the construction contractor; (4) a Construction Quality Assurance Project Plan ("CQAPP") including procedures and plans for the decontamination of equipment and the disposal of contaminated materials, if necessary; (5) a methodology for implementation of the Construction Health and Safety Plan, if necessary; and (6) a Performance Standards Verification Plan. The CQAPP, which shall detail the approach to quality assurance during construction

activities at the Site, shall specify an Independent Quality Assurance Team (as defined in the SOW), to conduct a quality assurance program during the construction phase of the project. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of Respondent's Remedial Action Team (including, but not limited to, the supervising contractor).

Upon approval by EPA, the RA Work Plan is incorporated into this Order as a requirement of this Order and becomes an enforceable part of this Order as if fully set forth herein. Any violation of the approved RA Work Plan shall be a violation of this Order. Upon approval of the RA Work Plan and all Remedial Design documents by EPA, after reasonable opportunity for review and comment by the State, Respondent shall implement the RA Work Plan in accordance with the schedules set out therein. Unless otherwise directed by EPA, Respondent shall not commence physical on-site activities prior to approval of the RA Work Plan by EPA.

If Respondent seeks to retain a construction contractor to assist in the performance of the Remedial Action, then Respondent shall publish the solicitation documents within fifteen (15) days after approval of prefinal/final design. Respondent shall submit a copy of the contractor solicitation documents to EPA not later than five (5) days after publishing the solicitation documents.

Within forty-five (45) days after publishing solicitation documents, Respondent shall notify EPA in writing of the name, title, and qualifications of the construction contractor proposed

to be used in carrying out work under this Order. If at any time Respondent proposes to change the construction contractor, Respondent shall notify EPA immediately and shall obtain approval from EPA, as provided in this paragraph, before the new construction contractor performs any work under this Order. If EPA disapproves of the selection of any contractor as the construction contractor, Respondent shall submit a list of contractors that would be acceptable to them to EPA within fifteen (15) days after receipt of EPA's disapproval of the contractor previously selected. EPA will thereafter provide written notice of the names of the contractors it approves, if any. Respondent may select any approved contractor from that list and shall notify EPA of the name of the contractor selected within ten (10) days of EPA's designation of approved contractors.

I. Operation and Maintenance and Performance Monitoring - The Operation and Maintenance Plan shall be developed and submitted to EPA for review and approval in accordance with the SOW. Respondent shall also develop and submit the Performance Standards Verification Plan to EPA for review and approval in accordance with the SOW. Upon approval by EPA, the Respondent shall implement the Operation and Maintenance Plan and the Performance Monitoring Verification Plan.

J. Performance Standards - The Work performed by Respondent pursuant to this Order shall, at a minimum, achieve the Performance Standards.

J. Warranties - Notwithstanding any action by EPA, Respondent

remains fully responsible for achievement of the Performance Standards set forth in the Record of Decision and the Statement of Work. Nothing in this Order, or in EPA's approval of the Remedial Design or Remedial Action Work Plans, or approval of any other submission, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Design or Remedial Action will achieve the Performance Standards set forth in the ROD and in the Statement of Work. Respondent's compliance with such approved documents does not foreclose EPA from seeking additional response actions to achieve the applicable Performance Standards.

K. Notification of Off-Site Waste Shipment - All materials removed from the Site shall be disposed of or treated at a facility approved by the EPA Project Coordinator and in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. 9621(d)(3), with the U.S. EPA "Revised Off-Site Policy," OSWER Directive 9834.11, November 13, 1987; and with all other applicable federal, state, and local requirements. Respondent shall, prior to any off-Site shipment of hazardous substances from the Site to an off-Site waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to the EPA Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the State will not exceed ten (10) cubic yards.

1. The notification shall be in writing, and shall include

the following information, where available: (a) the name and location of the facility to which the hazardous substances are to be shipped; (b) the type and quantity of the hazardous substances to be shipped; (c) the expected schedule for the shipment of the hazardous substances; and (d) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

2. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for Remedial Action construction. Respondent shall provide all relevant information on the off-Site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

3. The contents of this provision shall not be considered to be approval of the off-Site shipment of materials from the Site where the ROD requires treatment and/or storage on-Site.

IX. FAILURE TO ATTAIN PERFORMANCE STANDARDS

A. In the event that EPA determines that additional response actions are necessary to meet applicable Performance Standards, EPA shall notify Respondent that additional response actions are necessary.

B. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional response actions are necessary to meet applicable Performance Standards, Respondent shall submit to EPA for approval a work plan for the additional

response actions. The plan shall conform to the applicable requirements of Sections VIII, XIV, XV, and XVI as appropriate. Upon EPA's approval of the plan pursuant to Section XIII, the plan is incorporated into his Order as a requirement of this Order and shall be an enforceable part of this Order as if fully set forth herein. Upon approval by EPA, Respondent shall implement the plan for additional response actions in accordance with the schedule contained therein.

X. EPA PERIODIC REVIEW

Under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Respondent shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA. As a result of any review performed under this paragraph, Respondent may be required to perform additional response actions or to modify the Work previously performed.

XI. ADDITIONAL RESPONSE ACTIONS

A. EPA may determine that in addition to the Work identified in this Order and attachments to this Order, additional response actions may be necessary to meet the Performance Standards or to protect human health and the environment. If EPA determines that additional response actions are necessary, EPA will notify Respondent and may require Respondent to submit a work plan for such additional response actions. EPA may also require Respondent to modify any plan, design, or other deliverable

required by this Order, including any approved modifications. Respondent shall notify EPA of its intent to perform such additional response actions within seven (7) days after receipt of EPA's request for additional response actions.

B. Unless otherwise stated by EPA, not later than thirty (30) days after receiving EPA's notice that additional response actions are required pursuant to this Section, Respondent shall submit a work plan for the additional response actions ("Additional Response Action Plan") to EPA for review and approval. The Additional Response Action Plan shall conform to the requirements in Section VIII, XIV, XV, and XVI as appropriate. Upon approval by EPA, the Additional Response Action Plan shall be incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order as if fully set forth herein. Upon approval of the Additional Response Action Plan pursuant to the procedures set forth in Section XIII, Respondent shall implement the Additional Response Action Plan according to the standards, specifications, and schedule in the approved Additional Response Action Plan.

XII. ENDANGERMENT AND EMERGENCY RESPONSE

A. In the event of any action or occurrence after the effective date of this Order which causes or threatens a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or endangerment, and shall immediately notify EPA's Project Coordinator, or, if the Project Coordinator

is unavailable, the EPA Emergency Response and Removal Branch, Region IV. Respondent shall take such action in consultation with EPA's Project Coordinator and in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plans developed pursuant to the SOW. In the event that Respondent fails to take appropriate response action as required by this Section, and EPA takes that action instead, EPA reserves the right to pursue reimbursement of all EPA's costs attributable to the response action that are not inconsistent with the NCP.

B. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order any appropriate action necessary to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XIII. EPA REVIEW OF SUBMISSIONS

A. Upon receipt of any plan, report, or other item which is required to be submitted for approval pursuant to this Order, EPA shall, in writing, either: (1) approve the submission; or (2) disapprove the submission, notifying Respondent of deficiencies. If such submission is disapproved, EPA shall either (1) notify Respondent that EPA will assume the responsibility for modifying the submission to correct the deficiencies, including, if necessary, the underlying Work; or (2) direct Respondent to modify the submission and, if necessary, the underlying Work, to correct the deficiencies.

B. In the event of approval or modification by EPA, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified.

C. Upon receipt of a written notice of disapproval and directive for modification, Respondent shall, within thirty (30) days or such time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, Respondent shall proceed, at the direction of EPA, to take any action required by any nondeficient portion of the submission.

D. If, upon resubmission, the plan, report, or item is not approved, Respondent shall be deemed to be in violation of this Order.

E. The provisions of this Order shall govern all proceedings regarding the Work performed pursuant to this Order. In the event of any inconsistency between this Order and any required deliverable submitted by Respondent, the inconsistency will be resolved in favor of this Order.

XIV. PROGRESS REPORTS

A. In addition to the deliverables set forth in this Order, Respondent shall submit written monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the 5th day of each month following the effective date of this Order. Respondent's obligation to submit progress reports continues until EPA gives Respondent written notice that

Respondent has demonstrated, to EPA's satisfaction, that all of the terms of this Order, including any additional tasks which EPA has determined to be necessary, have been completed. In addition, EPA may request periodic briefings by Respondent to discuss the progress of the Work.

B. At a minimum these progress reports shall: (1) describe the actions which have been taken to comply with this Order; (2) include all results of sampling and tests and all other data received by Respondent during the course of the Work; (3) include all plans, reports, deliverables, and procedures completed under the work plans during the previous month; (4) describe all work planned for the next month with schedules relating such work to the overall project schedule for RA completion; and (5) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to mitigate or address any actual or anticipated problems or delays.

C. Upon the occurrence of any event during performance of the Work or additional response actions which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, Respondent shall promptly orally notify the EPA Project Coordinator, or in the event of the unavailability of the EPA Project Coordinator, the Emergency Response and Removal Branch, Region IV, United States Environmental Protection Agency, in addition to the reporting required by Section 103 of CERCLA, 42 U.S.C. § 9603. Within ten (10) days of the onset of such an event, Respondent shall furnish to the EPA a written report setting forth the events which

occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Respondent shall submit a report setting forth all actions taken.

D. Respondent shall submit each year, within thirty (30) days of the anniversary of the effective date of this Order, a summary report to the EPA setting forth the status of the Work which shall at a minimum include a statement of tasks accomplished in the preceding year, a statement of tasks remaining to be accomplished, and provide a schedule for implementation of the remaining Work.

XV. QUALITY ASSURANCE SAMPLING AND DATA ANALYSIS

A. Respondent shall use the quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plan" (QAMS-005/80) and the "EPA Region IV, Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual" (U.S. EPA Region IV, Environmental Services Division, April 1, 1986) and subsequent amendments to such guidelines. Prior to the commencement of any monitoring project under this Order, Respondent shall initially submit for review, modification and/or approval by EPA a Quality Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. This QAPP, upon approval, shall be sufficient to satisfy this requirement. All monitoring conducted under this Order shall be undertaken pursuant to this approved QAPP. Respondent shall assure that EPA personnel or authorized representatives are

allowed access to any laboratory utilized by Respondent in implementing this Order.

B. Respondent shall make available to EPA the results of all sampling and/or tests or other data generated by Respondent with respect to the implementation of this Order, and shall submit these results in monthly progress reports as described in Section XIV of this Order.

C. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA, and/or their authorized representatives, of any samples collected by Respondent pursuant to the implementation of this Order. Respondent shall notify EPA in writing not less than twenty (20) days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

D. Respondent shall ensure that the laboratory(ies) utilized by Respondent for analyses participates in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. In addition, EPA may require Respondent to submit data packages equivalent to those generated in the EPA Contract Laboratory Program (CLP) and may require laboratory analysis by Respondent of performance samples (blank and/or spike samples) in sufficient number to determine the capabilities of the laboratory.

E. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA,

the Solid Waste Disposal Act (SWDA), 42 U.S.C. § 6901 et seq., and any other applicable statutes or regulations.

XVI. COMPLIANCE WITH APPLICABLE LAWS

A. All actions by Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable or relevant and appropriate laws, as required by CERCLA and the NCP. The United States has determined that the activities contemplated by this Order are consistent with the NCP.

B. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on the Site. Where any portion of the Work requires a federal or state permit or approval under CERCLA and the NCP, Respondent shall submit on a timely basis applications and take all other actions necessary to obtain all such permits or approvals.

C. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

D. Respondent shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations. Respondent shall provide a certification to the United States that such provision has been included in its contracts and subcontracts, within fifteen (15) days of final execution of contracts for Remedial Design, Remedial Action, Operation and Maintenance, and Performance Monitoring work.

XVII. PROJECT COORDINATOR

A. Within fifteen (15) days after the effective date of this Order, Respondent shall designate a Project Coordinator and shall submit the name, address, and telephone number of the Project Coordinator to EPA. Respondent's Project Coordinator shall be responsible for overseeing the implementation of this Order. If Respondent wishes to change its Project Coordinator, Respondent shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator.

B. All communications, whether written or oral, from Respondent to EPA shall be directed to EPA's Project Coordinator or Alternate Project Coordinator, who shall be a Remedial Project Manager (RPM). EPA's Project Coordinator is:

Beth Brown
Remedial Project Manager
United States Environmental Protection Agency
345 Courtland Street, NE
Atlanta, Georgia 30365
(404) 347-7791

EPA's Alternate Remedial Project Coordinator is:

Harold Taylor, Chief
KY/TN Section
North Superfund Remedial Section
United States Environmental Protection Agency
345 Courtland Street, NE
Atlanta, Georgia 30365
(404) 347-7791

C. EPA has the unreviewable right to change its Project Coordinator or Alternate Designated Project Coordinator. If EPA changes its Project Coordinator or Alternate Project Coordinator, EPA will inform Respondent in writing of the name, address, and telephone number of the new Project Coordinator or Alternate

Project Coordinator.

D. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager and On-Scene Coordinator by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order and, to take any necessary response action when he or she determines that conditions at the Site may present an imminent and substantial endangerment to public health or welfare or the environment.

E. The absence of the EPA Project Coordinator from the Site shall not be cause for stoppage or delay of Work.

XVIII. SITE ACCESS

At all reasonable times from the effective date of this Order until EPA certifies completion of the Work pursuant to Section XXV of this Order, EPA and its authorized representatives and contractors shall have the authority to enter and freely move about all property at the Site and off-Site areas to which access is required to implement this Order, including areas subject to or affected by the clean up or where documents required to be prepared or maintained by this Order are located, to the extent access to the property is controlled by or available to Respondent. Access shall be allowed for the purposes of conducting any activity authorized by or related to this Order, including but not limited to: 1) inspecting conditions, activities, the results of activities, records, operating logs,

and contracts related to the Site or Respondent and its representatives or contractor pursuant to this Order; 2) reviewing the progress of Respondent in carrying out the terms of this Order; 3) conducting tests or inspections as EPA or its authorized representatives or contractors deem necessary to verify data or information submitted to EPA, take samples or investigate contamination at or near the Site; 4) assessing the need for planning and implementing additional remedial or response activities at or near the Site; or 5) using a camera, sound recording device or other documentary-type equipment.

XIX. ACCESS TO SITE NOT OWNED BY RESPONDENT

A. If the Site, or the off-Site area that is to be used for access, or other property subject to or affected by the clean up or where documents required to be prepared or maintained by this Order are located, is controlled or owned in whole or in part by parties other than those bound by this Order, Respondent will obtain, or use its best efforts to obtain, site access agreements from such parties within thirty (30) days of either the effective date of this Order or the date upon which it is determined that such access is necessary, whichever is later. Such agreements shall provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondent or Respondent's authorized representatives and contractors, and such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities requiring

such off-Site access. Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner.

B. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA in writing of its failure to obtain access. EPA may use its legal authorities to obtain access for Respondent, may perform those tasks or activities with EPA contractors, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that off-Site property, and shall be liable to EPA for reimbursement of all costs incurred in performing such activities. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. EPA reserves the right to seek cost recovery for all costs and attorney fees incurred by the United States to obtain access for Respondent.

C. Notwithstanding any provision of this Order, the United States retains all of its access authorities and rights under CERCLA, SWDA and any other applicable statutes or regulations.

XX. ACCESS TO INFORMATION AND DATA/DOCUMENT AVAILABILITY

A. Respondent shall provide to EPA and its authorized representatives, upon request, access to inspect and/or copy all documents and information in their possession and/or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including all files, records, documents, photographs, sampling and analysis records,

chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information relating to remedial activities and other Work required under the Order.

B. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondent at the time the assertion is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no claim of confidentiality accompanies specific documents or information when it is submitted to EPA, or if EPA has notified the Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b), the public may be given access to such documents or information by EPA or the state without further notice to the Respondent.

C. Respondent shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

D. Respondent shall maintain for the period during which this Order is in effect, an index of documents that Respondent claims contain privileged information or confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon

written request from EPA, Respondent shall submit a copy of the index to EPA.

XXI. RECORD PRESERVATION

A. Respondent shall provide to EPA upon request, copies of all documents and information within, or which come within, their possession and/or control or the control of their contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work.

Respondent shall also make available to EPA for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

B. Until EPA issuance of the Certification of Completion of the Work pursuant to Section XXV and termination of this Order, Respondent shall preserve, and shall instruct their contractors and agents to preserve, all documents, records, and information of whatever kind, nature, or description relating to the performance of the Work.

C. All records and documents in Respondent's possession at any time prior to termination of this Order that relate in any way to the Site shall be preserved and retained by Respondent for a minimum of ten (10) years after EPA certification of completion of all requirements under this Order. Respondent shall acquire and retain copies of all documents that relate to the Site and

are in the possession of its employees, agents, accountants, contractors, or attorneys. After this ten (10)-year period, Respondent shall notify EPA at least ninety (90) days before the documents are scheduled to be destroyed and shall relinquish custody of said records or documents to EPA at no cost, upon request.

D. EPA has the discretion to request that all records and documents be retained for a longer period of time by Respondent.

XXII. DELAY IN PERFORMANCE

A. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this paragraph shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

B. Respondent shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Order. Such notification shall be made by telephone to EPA's Designated Project Coordinator or Alternate Designated Project Coordinator within 48 hours after Respondent first knew or should have known that an event might cause a delay. Within five (5) business days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, the reasons the delay is beyond the control of Respondent, any defenses under Section 106(b)(1), 42 U.S.C. § 9606(b)(1), available to Respondent for failing to comply with any relevant requirements of this Order, and a schedule for implementing the

measures that will be taken to mitigate the effect of the delay. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Increased costs or expenses associated with implementation of the activities called for in this document shall not be considered circumstances beyond the control of Respondent.

XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK AND INSURANCE

A. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining, and presenting to EPA within thirty (30) days of the effective date of this Order, one of the following: (1) a performance bond; (2) a letter or letters of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent has sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than the highest estimate of cost for the Remedial Design and Remedial Action contained in the Record of Decision for the Site. If Respondent seeks to demonstrate ability to complete the Work by means of internal financial information, or by guarantee of a third party, they shall re-submit that information annually for that portion of the initially-assured amount that has not yet been expended, on the anniversary of the effective date of this Order. If EPA determines that such internal financial information is inadequate, Respondent shall, within thirty (30) days after receipt of written notice of EPA's determination, obtain and present to EPA for approval one of the other three

forms of financial assurance listed above. Respondent's lack of ability to demonstrate financial ability to complete work shall not excuse performance of this Order or any term thereof.

B. No later than ten (10) days prior to commencing any Work at the Site pursuant to this Order, Respondent shall secure, and shall maintain until the fifth anniversary of the issuance of the Certificate of Completion under this Order comprehensive general liability and automobile insurance with limits of at least one (1) million dollars, combined single limit. In addition, Respondent shall submit to EPA a certification that its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order. Prior to commencement of the Work under this Order, Respondent shall provide to EPA certificates of insurance and a copy of the insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

C. For the duration of this Order, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy,

all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing work on behalf of Respondent in furtherance of this Order.

XXIV. UNITED STATES NOT LIABLE

The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXV. CERTIFICATION OF COMPLETION

Within ninety (90) days after Respondent concludes that all phases of the Work have been fully performed, that the Performance Standards have been attained, and that all Operation and Maintenance and Performance Monitoring activities have been completed, Respondent shall submit to EPA a written report by a registered professional engineer or geologist certifying that the Work has been completed in full satisfaction of the requirements of this Order. EPA shall require such additional activities as may be necessary to complete the Work or EPA may, based upon present knowledge and Respondent's certification to EPA, issue written notification to Respondent that the Work has been completed. EPA's notification shall not limit EPA's right to

perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

XXVI. ENFORCEMENT AND RESERVATIONS

A. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not previously reimbursed by Respondent. This reservation shall include but not be limited to past costs, indirect costs, the cost of oversight, costs for compiling the cost documentation to support oversight cost demands, as well as accrual of interest as provided in Section 107(a) of CERCLA.

B. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

C. Nothing herein shall preclude EPA from continuing any existing enforcement actions and/or taking any additional enforcement actions, including modification of this Order or issuance of additional orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), or any other applicable law, or from seeking judicial enforcement of

this Order. Respondent shall be liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

D. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, SWDA, and any other applicable statutes and regulations.

E. Respondent shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$25,000 for each day in which a violation of this Order occurs or such failure to comply continues. Failure to comply with this Order, or any portion hereof, without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C.

§ 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund (as defined in CERCLA) as a result of such failure to take proper action.

F. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation for any liability EPA or the United States may have arising out of or relating in any way to the Site.

XXVII. REIMBURSEMENT OF RESPONSE COSTS

A. EPA reserves the right, upon written request, to demand that Respondent reimburse EPA for all response costs incurred by the United States including those costs incurred in overseeing Respondent's implementation of the requirements of this Order or

in performing any response action which Respondent fails to perform pursuant to this Order. EPA may submit to Respondent on a periodic basis an accounting of all response costs incurred by the United States with respect to this Order. Response costs may include, but are not limited to, costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order and in performing activities as part of the RD/RA and community relations, including any costs incurred while obtaining access for Respondent. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RD/RA activities, Site visits, discussions regarding disputes that may arise as a result of this Order, review and approval or disapproval of reports, and costs of performing any Work Respondent is required to perform under this Order. EPA's certified Agency Financial Management System summary data (SPUR Reports), or such other data summary as certified by EPA, shall serve as the basis for payment demands.

B. EPA's demand for payment shall request that Respondent, within thirty (30) days of receipt of each EPA accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from either the date that payment of a specified amount is demanded in writing or the date of the expenditure, whichever is later. The interest rate is the rate established by the Department of the Treasury pursuant to 31

U.S.C. § 3717 and 4 C.F.R. § 102.13.

C. Checks shall be made payable to "EPA Hazardous Substances Superfund" and shall include the name of the Site, the Site identification number, the account number and the title of this Order. Checks shall be forwarded to:

EPA-REGION IV
Attn: Superfund Accounting
P.O. Box 100142
Atlanta, GA 30384

D. Respondent shall send copies of each check and transmittal letter to EPA's Project Coordinator and to:

Ms. Carolyn McCall
Environmental Protection Specialist
Cost Recovery Section
345 Courtland Street, N.E.
Atlanta, Georgia 30365

XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME

This Order shall be effective five (5) days after signature by the Director, Waste Management Division. All times for performance of ordered activities shall be calculated from this effective date. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or legal holiday, the period shall run until the next working day.

XXIX. NOTICE OF INTENT TO COMPLY

Respondent shall provide, not later than five (5) days after the effective date of this Order, written or verbal notice to EPA stating whether they will comply with the terms of this Order. Any verbal notice must be confirmed in writing within two (2) days of the giving of such verbal notice. If Respondent does not unequivocally commit to perform the RD, RA, O&M, and Performance

Monitoring as provided by this Order, they shall be deemed to have violated this Order and to have failed and refused to comply with this Order. The written notice or written confirmation required by this paragraph shall set forth, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA.

XXX. OPPORTUNITY TO CONFER

- A. Respondent may, not later than three (3) days after the effective date of this Order, make a written or oral request for a conference with EPA, Region IV to discuss this Order. If requested, the conference shall occur at 345 Courtland Street, Atlanta, Georgia 30365. All telephone communications regarding a conference should be directed to Peter J. Raack at (404) 347-2641, extension 2243, or to Beth Brown at (404) 347-7791. The written request for a conference and notice of intent (or written confirmation, as the case may be) may be delivered to EPA by some means of personal delivery other than certified mail.
- B. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent

may appear in person or by an attorney or other representatives.

XXXI. MODIFICATION

No material modifications shall be made to this Order without written notification to and written approval by EPA. The notification required by this Section shall set forth the nature of and reasons for the requested modification. No oral modification of this Order shall be effective. Modifications that do not materially alter the requirements of this Order, such as minor schedule changes, may be made upon the written approval of EPA. Nothing in this paragraph shall be deemed to alter EPA's authority to supervise and modify this Order.

So Ordered, this 11th day of February, 1993.

BY: Joseph R. Franzmathes
Joseph R. Franzmathes
Director
Waste Management Division
Region IV
U.S. Environmental Protection Agency

DATE: 2/11/93

APPENDICES

Appendix 1	Record of Decision
Appendix 2	Statement of Work
Appendix 3	Site Map